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SUPREME COURT OF THE UNITED STATES

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No. 276

**CARY D. LANDIS, INDIVIDUALLY AND AS ATTORNEY GENERAL
OF THE STATE OF FLORIDA, ET AL.,**

Appellants,

vs.

**GENE BUCK, INDIVIDUALLY, AND AS PRESIDENT OF THE
AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS,
ETC., ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF FLORIDA.**

STATEMENT AS TO JURISDICTION.

GEORGE COUPER GIBBS,
Attorney General of the State of Florida;

TYRUS A. NORWOOD,
Assistant Attorney General;

ANDREW W. BARNETT,

LUCIEN H. BOGGS,

Counsel for Appellants.

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STATUTES CITED.

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IN THE UNITED STATES DISTRICT COURT IN AND
FOR THE NORTHERN DISTRICT OF FLORIDA,
GAINESVILLE DIVISION

Equity. No. 12.

GENE BUCK, INDIVIDUALLY, AND AS PRESIDENT OF THE
AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, ETC., ET AL.,
Complainants,

vs.

CARY D. LANDIS, INDIVIDUALLY AND AS ATTORNEY GENERAL
OF THE STATE OF FLORIDA, ET AL.,
Defendants.

STATEMENT AS TO JURISDICTION.

(a) The Statutory Provisions Sustaining the Jurisdiction.

The defendants rely upon U. S. C., Title 28, sections 345 and 380, respectively, as amended, as sustaining the jurisdiction of the Supreme Court of the United States to review the above entitled cause upon appeal.

(b) The Statute of the State of Florida, the Validity of Which is Involved.

The statute of the State of Florida, the validity of which is involved, is the Act of June 9, 1937, being Chapter 17807, Laws of Florida, 1937, General Laws, Vol. 1, pages 204 to 214, inclusive. This statute is directed at monopolistic

practices of the owners of copyrighted musical compositions, and prescribes *rules* under which the property may be sold in the State of Florida. The only sections of the statute pertinent to this action against the defendants are sections 1 and its dependent sections 3, 4-A, 4-B, 5-A, 5-B, 7-A, 7-B, 8 and 9. The defendant prosecuting officers have no duties to perform with respect to any of the remaining sections. Primarily the pertinent sections prohibit price-fixing in intrastate transactions by combinations of copyright owners acting in concert. A *verbatim* copy of the statute is attached as Appendix "A".

(c) The Order Granting Interlocutory Injunction Sought to be Reviewed.

The order appealed from was dated and entered April 4, 1938. The petition for appeal was presented April 25, 1938.

(d) The Nature of the Case and of the Ruling of the Court.

The action herein was instituted February 7, 1938, for the purpose of enjoining the enforcement of and declaring void each and every part of the Florida statute, as violative of the Constitution of the United States. Complainants filed their motion for interlocutory injunction and supporting affidavits, and defendants filed a motion to dismiss the bill, based upon the absence of Federal jurisdiction and other grounds, a motion to deny complainants' motion for interlocutory injunction and supporting affidavits. These motions were heard March 3, 1938, by the specially constituted District Court, composed of Circuit Judge Foster and District Judges Strum and Long.

On April 4, 1938, the court rendered a memorandum opinion and entered an order denying the motion to dismiss the bill and enjoining, until further order of the court, the defendant prosecuting officers, individually and officially, from

directly or indirectly bringing any proceeding, criminal or civil, at law or in equity, to enforce any of the provisions of said statute, or from threatening so to do. *Verbatim* copies of the opinion and order are attached as Appendix "B" and Appendix "C", respectively.

(e) Cases Sustaining the Jurisdiction of the Supreme Court of the United States.

Pope et al. v. Blanton County Judge et al., 299 U. S. 521;

Railroad Comm. v. Maxcy, 281 U. S. 82;

Public Service Comm. v. Wisconsin Telephone Co., 289 U. S. 67, 71.

(f) The Substantial Questions Involved.

This appeal involves the following substantial questions:

QUESTION 1. Had the District Court jurisdiction as a Federal court to take any action whatsoever in this suit other than to dismiss the bill for want of jurisdiction?

Federal jurisdiction is predicated in the bill upon the assertion that the value of the matter in dispute is in excess of the sum of \$3,000, exclusive of interests and costs (bill, par. 6), and that the action arises under the Constitution and laws of the United States (bill, par. 7). Thus, if Federal jurisdiction exists, it is by virtue of U. S. C., Title 28, Section 41 (1). Complainants make no contention that it is a suit "arising under the * * * copyright * * * laws". U. S. C., Title 28 Section 41 (7). The suit does not involve the validity of any copyright or the infringement thereof, but merely rights incidental to the copyright laws, in that the property interest of the complainants is a creature of such laws, as in *Albright v. Teas*, 106 U. S. 613.

The allegation of the bill that the value of the matter in dispute is in excess of \$3,000, exclusive of interests and

costs, was specifically challenged by defendants' motion to dismiss, and complainants have failed to establish it. The property rights which the bill charges will be adversely affected by the statute are public performance rights in a large number of copyright musical compositions, which, up to December 31, 1940, have been assigned to American Society of Composers, Authors and Publishers, an unincorporated association not for profit, organized under the laws of the State of New York. The members of the Society consists of 123 music publishers and approximately 1,000 authors and composers, all elected to membership by a self-perpetuating board of directors. All revenues derived from the licensing of these performance rights are collected by the Society. These revenues are applied, first, to the cost of its own operations; second, to payment of an unstated portion to some 44,000 foreign composers, authors and publishers, non-members of the American Society but members of foreign societies represented by the American Society in licensing their American performance rights; third, a reserve fund not exceeding 10% maintained by the Society for divers purposes; and finally, the residual net profits are divided into two equal parts, one of which is distributed among the publisher members as the board, in its discretion, may determine; the other, among the composer and author members, as the board's discretion may determine.

Gross receipts of the Society for the year 1936 from all Florida licenses were \$59,306.81. Neither the particular musical compositions, nor the names of their composers, authors or publishers from which these revenues were derived are stated, nor with respect to Florida operations, is any showing made as to the cost of the Society's operations, the amount of payments to foreign non-member affiliates, nor the net profit distribution to any of the Society's members. Estimates of the supposed cost of compliance with the requirements of the Florida statute are included in the bill.

but these include costs of investigations and prosecution of infringements and other activities not prevented by the statute. Estimates are also given as to the supposed value of the copyrights owned by certain of the plaintiffs, but these figures are not restricted to rights in Florida, but cover the entire geographical field of copyright. Considering the entire picture made by the bill, no means is offered by which the value of the rights of the Society itself, or of any publisher member or of any composer or author free of the restrictions imposed by the Florida Statute may be compared against the value of those rights subject to the restrictions of the statute.

So far as concerns complainant American Society of Composers, Authors and Publishers, the bill and its exhibits affirmatively show that it is a non-profit association and can sustain no loss; such loss, if any, falling upon its respective members (*KVOS v. Associated Press*, 299 U. S. 269), though in amounts unascertainable because of the uncontrolled discretion of the directors in apportioning profits.

QUESTION 2. May a combination of owners of copyrights admittedly organized for price-fixing invoke the aid of a court of equity to assist them in the furtherance of their monopolistic price-fixing practices?

This question was squarely raised in the motion to dismiss the bill. The bill and exhibits thereto affirmatively show that a substantial number of the copyright owners of musical compositions in the United States (approximately 123 United States music publishers, 1,000 United States composers and authors, and 44,000 foreign publishers, composers and authors) have vested the exclusive right to license the performing rights of their combined copyrights in the American Society of Composers, Authors and Publishers, with the power "to fix the rate, time and manner of payment of royalties".

This price-fixing power and all other functions of the said Society are wielded by a self-perpetuating board of directors in whom the entire management and operation of the Society is vested by the Articles of Association. The Society issues only blanket licenses covering the vast number of copyrights in the pool upon payment of an annual fee by the licensee. With respect to radio broadcasting stations the annual fee includes a *fixed per cent of the gross income of the station* (See *Standard Oil Co. (Ind.) et al. v. United States*, 283 U. S. 163, 174, note #9). With respect to all other licenses, the royalty is a straight annual charge without respect to the income of the licensee.

There are 367 license contracts in force in the State of Florida between the Society and radio broadcasting stations, motion picture theatres, hotels, restaurants, dance halls and other amusement enterprises. Some 30,000 similar license contracts are in force throughout the United States. The licensee must accept a license covering all the copyrighted musical compositions concentrated in the pool and may not acquire a license limited only to that portion required by his business. "The license fees in all these cases are fixed and determined by the Society on behalf of all its members" (bill, par. 23).

(g) The Abuse of Discretion in Granting the Interlocutory Injunction.

The specially constituted District Court, in granting the interlocutory injunction, abused its discretion in the following respects:

1. By entering the order denying defendants' motion to dismiss the bill and granting the interlocutory injunction upon a memorandum opinion, without any findings of fact or conclusions of law which persuasively show the need for nullifying the action of the Legislature of the State of

Florida, as is required by Equity Rule 70½, as amended November 25, 1935.¹

2. By taking any action other than to dismiss the bill for want of jurisdiction when complainants, and each of them, failed to establish the existence of the jurisdictional amount of \$3,000, exclusive of interest and costs.

3. By lending injunctive aid to a combination of owners of copyrights, admittedly organized for price-fixing, in the furtherance of that combination's monopolistic price-fixing practices.

4. By failing to recognize and to hold that the defendant prosecuting officers have no duties to perform under, nor can any action be taken by them with respect to any provisions of the statute except section 1 and its dependent sections. The authority of the defendant prosecuting officers is expressly limited by the provisions of section 9 of the statute to proceedings "against any combination as defined in section 1² and against any of its members, agents or representatives".

5. By failing to recognize and to hold that section 1 and its dependent sections constitute a valid exercise of the police power of the Legislature of the State of Florida to restrain monopolistic practices within the State of Florida.

6. By granting the interlocutory injunction when it does not persuasively appear from any finding of facts and con-

^{1, 2} "At the time of filing this statement as required by Rule 12, paragraph 1 of the Supreme Court of the United States, no findings of fact or conclusions of law whatever had been made or filed by the Court, although the Court was required to do so by Equity Rule 70½, as amended November 25, 1935. Afterward (May 17, 1938) findings of fact and conclusions of law were made and filed as appears by Transcript of Record herein. However, said findings and conclusions do not persuasively show the need for nullifying the action of the Legislature of the State of Florida and do not make it persuasively appear that the unconstitutionality of the statute is reasonably free from doubt."

clusions of law that the unconstitutionality of the statute is reasonably free from doubt.³

CARY D. LANDIS,

Attorney General;

TYRUS A. NORWOOD,

Assistant Attorney General;

ANDREW W. BENNETT,

LUCIEN H. BOGGS,

Solicitors for Defendants.

And on August 8, 1938, Defendants filed an Order of Court (signed on August 4, 1938) Allowing Amendments to Statement as to Jurisdiction and Assignment of Errors, in words and figures following:

IN THE UNITED STATES DISTRICT COURT IN AND
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION.

GENE BUCK, individually and as President of the American
Society of Composers, Authors and Publishers, etc., *et al.*
Complainants,

vs.

CARY D. LANDIS, Individually and as Attorney General of the
State of Florida, *et al.*, Defendants.

ORDER ALLOWING AMENDMENTS TO STATEMENT AS TO JURIS-
DICTION AND ASSIGNMENT OF ERRORS.

This day this cause came on to be heard upon defendant
State's attorneys' motion and upon consideration thereof it
is accordingly

³ "At the time of filing this Statement as required by Rule 12, Paragraph I of the Supreme Court of the United States, no findings of fact or conclusions of law whatever had been made or filed by the Court, although the Court was required to do so by Equity Rule 70½, as amended November 25, 1935. Afterward (May 17, 1938) findings of fact and conclusions of law were made and filed as appears by Transcript of Record herein. However, said findings and conclusions do not persuasively show the need for nullifying the action of the Legislature of the State of Florida and do not make it persuasively appear that the unconstitutionality of the statute is reasonably free from doubt."

Considered and ordered that defendant State's attorneys are hereby granted leave to amend the original Statement as to Jurisdiction and the original Assignment of Errors filed in this cause on the 25th day of April, 1938, in the following particulars, to-wit:

1. Statement as to Jurisdiction:

By inserting at the end of paragraphs (g) 1 and (g) 6, respectively, an asterisk; and at the end of said Statement as to Jurisdiction a further asterisk followed by a note which shall read:

"At the time of filing this Statement as required by Rule 12, Paragraph I of the Supreme Court of the United States, no findings of fact or conclusions of law whatever had been made or filed by the Court, although the Court was required to do so by Equity Rule 70½, as amended November 25, 1935. Afterward (May 17, 1938) findings of fact and conclusions of law were made and filed as appears by Transcript of Record herein. However, said findings and conclusions do not persuasively show the need for nullifying the action of the Legislature of the State of Florida and do not make it persuasively appear that the unconstitutionality of the statute is reasonably free from doubt."

2. Assignment of Errors:

By inserting at the end of the Serenth Assignment of Error an asterisk; and at the end of the Assignment of Errors a further asterisk followed by a note which shall read:

"At the time of filing this Assignment of Errors, as required by Rule 9 of the Supreme Court of the United States, no findings of fact or conclusions of law whatever had been made or filed by the Court, although the Court was required to do so by Equity Rule 70½, as amended November 25, 1935. Afterward (May 17, 1938) findings of fact and conclusions of law were made and filed as appears by Transcript of Record herein."

and the Clerk of this Court is hereby directed to amend the said Statement and said Assignment of Errors as hereinabove allowed and further to include the said Motion and

this Order in the Transcript of Record on this appeal and the said Clerk is hereby further directed to include the Order extending Time for Filing Transcript of Record in this case in the Supreme Court of the United States, filed herein on the 31st day of May, 1938.

Done and Ordered this 4th day of August, 1938, at Jacksonville, Florida.

LOUIE W. STRUM,
United States District Judge.

APPENDIX A.**Chapter 17807—Acts of 1937.****Senate Bill No. 679.**

AN ACT Declaring to be an Unlawful Monopoly and Its Purposes to be in Restraint of Trade, any Combination of Persons, Firms or Corporations Which Determine the Amount of Money to be Paid to it or to its Members for the Privilege of Rendering Privately or Publicly for Profit Copyrighted Vocal or Instrumental Musical Compositions, When Such Combination is Composed of a Substantial Number of All Musical Composers, Copyright Owners, or Their Heirs, Successors or Assigns; to Require Each Composer and Each Author of Vocal or Instrumental Copyrighted Musical Compositions to Act Independently of any Combination as Herein Declared Unlawful in Determining License Fees and Other Rights; to Require the Author, Composer and Publisher to Specify Upon the Musical Composition the Selling Price Thereof, Including Public Performance for Profit; to Declare That any Purchaser Thereof, Who Pays Such Price Therefor Shall Have the Right to Render Such Music Privately or Publicly for Profit; to Declare All Existing Agreements Requiring License Fees or Other Exactions for the Privilege of Rendering Copyrighted Musical Compositions Publicly for Profit, Made With any Combination, Firm or Corporation Herein Declared Unlawful, to be Void and Non-enforceable; to Permit the Present Owners, Possessors and Users of Such Copyrighted Music to Render the Same Privately or Publicly for Profit Without Interference by Such Unlawful Combination; to Provide for the Protection of Theatres, Moving Picture Houses, Hotels, Places for Education and Public Performance or Amusement, Radio Broadcasting and Radio Receiving and Radio Re-Broadcasting Station Affiliated With Other Persons, Firms or Corporations Outside of the State of Florida. Against the Collection of License Fees or Other Exactions by Such of the State Affiliates for or on Account of any Combination Herein Declared Unlawful; to

Provide all Liability for any Infringement of Copyrighted Musical Compositions Conveyed by Radio Broadcasting, Air, Wire, Electrical Transcription or Sound Producing Apparatus, or by Personal Performance Coming Outside of the State of Florida and Used Herein to Rest Exclusively on the Out of the State Person, Firm or Corporation Originally Sending the Same Into This State for Use Herein; to Provide Penalties for the Violation Hereof; to Empower the State's Attorney, Under the Direction of the Attorney General, Upon the Complaint of any Party Aggrieved by any Violation Hereof to Proceed to Enforce the Penalties Hereof Against Such Combination and Any of its Members, Agents or Representatives; to Empower any party Aggrieved by any Violation Hereof to Proceed in His Own Right Hereunder; to Define the Legal Procedure Required to Carry Out the Provisions Herein; to Provide for the Recovery of Costs, Expenses and Attorney's Fees; to Provide That the Terms of this Act Shall be Cumulative; to Provide that any Part of this Act Declared Illegal Shall not Affect the Validity of the Remaining Parts Hereof.

Be It Enacted by the Legislature of the State of Florida:

SECTION 1. It shall be unlawful for authors, composers, publishers, owners, or their heirs, successors or assigns, of copyrighted vocal or instrumental musical compositions to form any society, association, partnership, corporation or other group or entity called herein a combination, when the members therein constitute a substantial number of the persons, firms, or corporations within the United States who own or control copyrighted vocal or instrumental musical compositions, and when one of the objects of such combination is the determination and fixation of license fees or other exactions required by such combination for itself or its members or other interested parties for any use or rendition of copyrighted vocal or instrumental musical compositions for private or public performance for profit; and the collection or attempted collection of such license fee or other exaction so fixed and determined by any member, agent, or representative of such combination herein declared unlawful, from any person, firm or corporation within this

State, including theatres, radio receiving, radio broadcasting and radio re-broadcasting stations, moving picture houses, hotels, restaurants, clubs, dance halls, recreation rooms, pavilions, colleges, universities, churches; or any one who uses music in the conduct of his business, or the officers, directors, proprietors, managers, owners or representatives thereof, who render or cause to be rendered or permit to be rendered such copyrighted vocal or instrumental musical compositions privately or publicly for profit through personal performance; or through radio or any instrumentality or sound producing apparatus, shall be and the same are hereby declared unlawful and illegal; and such license fees or other exactions by such combination or its agents, members, or interested parties, shall not be collected in any Court within the boundaries of this State; and such collection or attempted collection of such license fee or other exaction by such combination or its agents, members or interested parties shall be a separate offense hereunder; and any such combination of authors, composers or publishers, or their heirs, successors or assigns, as herein defined, is hereby declared to be an unlawful monopoly in this State; and the fixing of prices or exactions for use or rendition of copyrighted musical compositions and the collecting or attempting to collect such license fees or other exactions by it or for its members or other interested parties, is hereby declared illegal and in restraint of trade; and such collection or attempted collection is declared to be an intrastate transaction within this State, and shall be subject to the terms and penalties of this Act.

SECTION 2-A. All authors, composers or publishers, and their heirs, successors or assigns, shall specify or cause to be specified legibly upon the musical composition, in whatever form the same may be published, printed, manufactured or otherwise prepared for use or rendition, the selling price thereof so arrived at and determined for all uses and purposes; and when any purchaser or user acquires the same within this State and pays the selling price so specified thereon to the seller or publisher of such musical composition, then said purchaser or user may use or render, or cause or permit to be used or rendered, the said copyrighted musical composition by persons individually or

with other performers, actors and singers, or by any individual instrument player, or by orchestras and bands, or over or through or by means of radio loud speakers, radio receiving, radio broadcasting and radio re-broadcasting stations, electrical transcriptions, musical records, sound apparatus or otherwise, and the same may be so rendered either privately or publicly for profit without further license fees or other exactions; and such copyright owner or proprietor in such event shall be deemed to have received full compensation for the rendition and all uses of such musical compositions for private and public performance for profit.

SECTION 2-B. In the event any author, composer or publisher or any of his heirs, successors or assigns, fails or refuses to affix on the musical composition the selling price and collect the same, for private or public performances or profit, at the time and in the manner specified in this Act, then any person, firm or corporation in this State who may have purchased and paid for such copyrighted musical composition, may use the same for private or public performance for profit without further license fee or other exaction; and such person, firm or corporation so using or rendering the same shall be free from any and all liability in any infringement or injunction suit, or in any action to collect damages instituted by such copyright proprietor or owner in any Court within this State.

SECTION 2-C. Nothing in this Section or this Act shall be construed to give to any purchaser of copyrighted musical compositions, as herein provided, the right to resell, copy, print, publish or vend the same; nor to prevent authors and composers from determining and fixing the price to be charged for the use or rendition of their copyrighted musical compositions, provided such authors and composers act independently of any such combination as in Section 1 hereof declared unlawful.

SECTION 3. All existing contracts, agreements or licenses now existing within this State, made by any person, firm or corporation with any combination declared unlawful under Section 1 hereof, are hereby declared void and non-enforceable in any Court within this State, and are hereby declared to have been entered into as intra-state transactions with

such unlawful combinations and in restraint of trade. And all such contracts, agreements, licenses and the attempted enforcement thereof may be enjoined by any person, firm or corporation sought to be bound thereby; and any agent, member or representative of such unlawful combination enforcing or attempting to enforce the terms of such existing contract, agreement or license, shall be guilty of a violation of the terms of this Act; and for any collection or attempted collection of moneys set out in the illegal contract, agreement or license, shall be subject to the penalties of this Act.

SECTION 4-A. Any person, firm or corporation who owns, leases, operates or manages a radio broadcasting, radio receiving or radio re-broadcasting station within this State, shall be and is hereby authorized to receive, broadcast and re-broadcast copyrighted vocal or instrumental musical compositions, the copyrights of which are owned or controlled by any such combination declared unlawful by Section 1 hereof, without the payment, to such combination or to its agents, representatives or assigns, of any license fee or other exaction declared illegal and non-collectible by the terms hereof.

SECTION 4-B. When such radio receiving, radio broadcasting or radio re-broadcasting station is affiliated with any other person, firm or corporation owning, leasing or operating a radio broadcasting station outside this state from whence copyrighted vocal or instrumental musical compositions originate or emanate, and which are received, used, broadcast or re-broadcast within this State, in accordance with the terms of any affiliation agreement or other contract, then such person, firm or corporation owning, leasing, operating or managing a radio broadcasting station outside this State, shall be and is hereby prohibited from in any manner charging or attempting to charge or collecting or attempting to collect, from any person, firm or corporation who owns, leases, operates or manages a radio broadcasting, radio receiving or radio re-broadcasting station within this State, any herein declared non-collectible license fee or other exaction, for the purpose of paying or repaying the

same outside this State to any combination, or its members, stockholders or other interested parties, declared unlawful by Section 1 hereof; and any such person, firm or corporation, collecting or attempting to collect such license fee or other exaction against such persons, firms or corporations within this State for the purpose of paying or reimbursing itself for having paid any such license fee or other exaction herein declared unlawful and non-collectible, shall be deemed guilty of a violation of the provisions of this Act; and such person, firm or corporation from without this State is hereby declared to be an agent and representative of such combination as declared illegal and unlawful by Section 1 hereof and shall be subject to all the penalties hereof.

SECTION 5-A. Any person, firm or corporation who owns, operates or manages any theatre or theatres, moving picture house or houses, or a similar place or places for amusement and public performance within this State, shall be authorized to receive, use and render, or cause to be received, used and rendered, by the personal performance of artists, singers, musicians, orchestras, bands or actors, or by loud speakers, radio, sound production or reproduction apparatus or instrumentalities, or electrical transcriptions or by other means of rendition whatsoever, copyrighted vocal or instrumental musical compositions, the copyrights of which are owned or controlled by any such combination declared unlawful by Section 1 hereof, without the payment, to such combination, or to its agents, representatives or assigns, of any license fee or other exaction declared illegal and non-collectible by the terms of this Act.

SECTION 5-B. When such theatre or theatres, moving picture house or houses, or other places for amusement or performance is or are affiliated or under contract in any manner whatsoever with any other person, firm or corporation furnishing in any form or manner copyrighted musical compositions from outside this State, or supplying such persons, firms or corporations in this State, with radio broadcasts or electrical transcriptions, sound production instrumentalities or apparatus, or artists, performers, musicians, singers, players, orchestras, bands or other artists or talent, wherein or whereby copyrighted vocal or instru-

mental musical compositions are privately or publicly rendered for profit, then such person, firm or corporation outside this State shall be and is hereby prohibited from in any manner charging or attempting to charge, or collecting or attempting to collect, from any such person, firm or corporation who owns, leases, operates or manages such theatre or theatres, moving picture house or houses, or other places for amusement or public performance within this State, any license fee or other exaction for the purpose of paying or repaying the same to any such combination declared unlawful by Section 1 hereof for the use, rendition or performance of such copyrighted musical compositions, and any such person, firm or corporation, collecting or attempting to collect, such license fee or other exaction from outside this State against such persons, firms or corporations within this State for the purpose of paying or reimbursing itself for having paid any such license fee or other exaction herein declared unlawful and non-collectible, shall be deemed guilty of a violation of the provisions of this Act: and such person, firm or corporation from without this State is hereby declared to be an agent and representative of such combination declared illegal and unlawful by Section 1 hereof, and shall be subject to all the penalties hereof.

SECTION 6. Whenever any person, firm or corporation who owns, leases, operates or manages a radio receiving, radio broadcasting or radio re-broadcasting station, or theatre or moving picture house or similar place for amusement and public performance or for the rendition in any manner of copyrighted vocal or instrumental musical compositions, and which radio stations and theatres, and other persons, firms or corporations aforementioned, are affiliated with persons, firms or corporations outside this State from whence said copyrighted vocal or instrumental musical compositions originally emanate either by radio, sound production instrumentalities or apparatus, or by furnishing a person or persons to play or sing such music within this State, then the responsibility and liability for the use of all copyrighted vocal or instrumental musical compositions thus emanating from outside this State shall rest with and be upon such affiliated person, firm or corporation from outside this State who

originates the broadcasting or the performance or the sound production instrumentality or apparatus, or sends the personal singers or performers into this State; and the owner or proprietor of the copyrighted vocal or instrumental musical compositions shall be and is hereby prohibited from suing for infringement, loss or damage within the boundaries of this State, for the use or rendition of such copyrighted vocal or instrumental musical compositions because such persons, firms or corporations used, rendered or performed the same within the State; and said copyright owner or proprietor shall make his collection therefor from the person, firm or corporation from outside this State from whence the use of said copyrighted vocal or instrumental musical compositions originally emanated; the use or rendition by radio broadcast, radio re-broadcast or sound producing instrumentalities or apparatus, or electrical transcription, or by the personal performance of singers, players and musicians sent into this State, or otherwise, of such copyrighted musical compositions within this State in the manner set forth in this section, shall be considered, for the purpose of this Act, as intra-state business of this State and subject to the control, regulation and prohibitions set forth in this Act notwithstanding that such copyrighted musical compositions originated or emanated from without this State.

SECTION 7-A. Any person, firm or corporation within this State who shall act as the representative of any combination herein declared unlawful as defined in Section 1 hereof, shall for the purpose of this Act, be deemed an official representative and agent of such unlawful combination and shall be construed to be doing business within this State, and service of any process against such combination may be had upon such representative or the agent of such representative as herein defined; and when so served, such process shall have the same legal effect as if served upon a duly elected officer or managing agent or other official representative upon whom service might otherwise be made upon such combination within this State.

SECTION 7-B. Furthermore, any person or persons who negotiates for, or collects, or attempts to collect license fees or other exactions, or who acts as the representative or agent

for any combination declared unlawful in Section 1 hereof, shall, for the purpose of this Act, be considered as a part of said unlawful combination; and such person, firm or corporation shall be subject to all the penalties in this Act provided for violations thereof;

SECTION 8. Any combination as in Section 1 hereof declared to be unlawful, and any other person, firm or corporation acting or attempting to act within this State in violation of the terms of this Act, or any representative or agent of any person, firm or corporation who aids or attempts to aid any such unlawful combination as defined in Section 1 hereof, in the violation of any of the terms of this Act, in any manner whatsoever, shall be punished by a fine of not less than \$50.00 or more than \$5,000.00, and by imprisonment in the penitentiary not less than one or more than ten years, or by either such fine or imprisonment.

SECTION 9. The several Circuit Courts of this State shall have jurisdiction to prevent and restrain violations of this Act, and on the complaint of any party aggrieved because of the violation of any of the terms of this Act anywhere within this State, it shall be the duty of the State's Attorneys in their respective circuits, under the direction of the Attorney General, to institute proceedings, civil or criminal or both, under the terms hereof, against any combination as defined in Section 1 hereof, and against any of its members, agents or representatives as herein defined, to enforce any of the rights herein conferred, and to impose any of the penalties herein provided, or to dissolve any such combination as declared unlawful by Section 1 hereof. In civil actions such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of have been duly notified of such petition, the Court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the Court may at any time make such temporary restraining order as shall be deemed equitable.

SECTION 10-A. Any person, firm or corporation in this State aggrieved by reason of anything forbidden in this Act may sue therefor in any Circuit Court in the circuit in

which the violation or a part thereof took place, to recover any damages assessed as a result of the violation of the terms of this Act, and shall be entitled to recover his or its costs, including reasonable attorney's fees to be fixed by the Court in such action.

SECTION 10-B. In the event of the failure of the State's Attorney and Attorney General to act promptly, as herein provided, when requested so to do by any aggrieved party, then such party may institute a civil proceeding in his own behalf, or upon behalf of Plaintiff and others similarly situated, as the State's Attorney and the Attorney-General could have instituted under the terms of this Act.

SECTION 11-A. In any proceeding brought under the terms of this Act, any attorney of record for the Plaintiff may file with the Clerk of the Court in which such action is pending a petition praying that the Defendant or Defendants be required to file with the Clerk of said Court exact copies of all documentary evidence, records or data in the possession or under the control of said Defendant or Defendants pertaining to the issues as alleged by the Plaintiff in the cause; and the Circuit Court, upon the presentation to it of such petition, shall determine what part, or all, or any of such evidence shall be produced, and enter an order to that effect. A copy of such order shall be mailed to each Defendant at his, her or its last known address, which shall be deemed sufficient notice and service upon such Defendant or Defendants. Or, the same may be served by mail in the same manner upon the attorney or attorneys of record for the Defendant or Defendants, and this shall be deemed sufficient notice and service upon said Defendant or Defendants.

SECTION 11-B. If said Defendant or Defendants shall fail to file with the Clerk of the Court in which such action is pending said copy or copies of documentary evidence, records or data, and within the time provided in said order, the Court shall adjudge such Defendant or Defendants guilty of contempt and shall assess a fine of \$100.00 against each of the Defendants for each and every day that such Defendant or Defendants fail to comply with said order, and judgment shall be entered accordingly. And the Plaintiff

may collect the same against the Defendant or Defendants with interest thereon and costs, including a reasonable attorney's fee. And the Court shall determine when the judgment is rendered what disposition shall be made of the proceeds collected after the payment of costs and attorney's fees.

SECTION 12. If any section, sub-section, sentence, clause or any part of this Act, is for any reason, held or declared to be unconstitutional, imperative or void, such holding or invalidity shall not affect the remaining portions of this Act; and it shall be construed to have been the legislative intent to pass this Act without such unconstitutional, inoperative or invalid part therein; and, the remainder of this Act, after the exclusion of such part or parts, shall be held and deemed to be valid as if such ~~excluded~~ parts had not been included herein.

SECTION 13. Nothing in this Act shall be construed as repealing any other law or parts of laws in reference to any of the matters contained in this Act; and the rights and remedies and provisions herein provided shall be and are hereby declared to be cumulative to all other rights, remedies and provisions now provided under the laws of the State of Florida.

SECTION 14. This Act shall become effective immediately upon its becoming a law.

Approved by the Governor June 9, 1937.

Filed in Office Secretary of State, June 10, 1937.

APPENDIX B.

IN THE UNITED STATES DISTRICT COURT IN AND
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION.

Equity. #12.

GENE BUCK, Individually and as President of the American Society of Composers, Authors and Publishers, etc.
et al., Complainants,

vs.

CARY D. LANDIS, Individually and as Attorney General of the State of Florida, *et al.*, Defendants.

MEMORANDUM OPINION.

Per CURIAM:

The Complainants, American Society of Composers, Authors and Publishers, an unincorporated association organized and existing under the laws of the State of New York, Gene Buck, individually and as President of the American Society of Composers, Authors and Publishers, and others filed their bill of complaint on the 7th day of February 1938 against the Attorney General of the State of Florida and a number of State Attorneys, in which bill it is sought to enjoin the defendants from enforcing the provisions of an Act of the Florida Legislature passed during the Session of 1937, which law declares any combination of persons, firms or corporations, which determine the amount of money to be paid to it or to its members for the purpose of rendering privately or publicly for profit copyrighted vocal or instrumental musical compositions when such combination is composed of a substantial number of all musical composers, copyright owners or their heirs, successors or assigns, to be an unlawful monopoly and its purpose would be in restraint of trade. It makes it unlawful for authors, composers, proprietors, publishers or owners of copyrighted musical compositions, when the members, stockholders or interested parties constitute a substantial num-

ber of persons, firms or corporations within the United States who own or control copyrighted musical compositions, to form any organization either in Florida or elsewhere if one of the objects of the organization is the determination of license fees required for the use of copyrighted musical compositions for profit in Florida, for the purpose of preventing free competition between different copyright owners. There are penalty provisions applying where any attempt is made to collect license fees by the owners of copyright and requiring authors, composers and publishers to specify on any published musical composition prepared for use in Florida the selling price of such composition. Other provisions seek to limit the rights of copyright owners or licensees to control the sale, reproduction or use of their products in the State of Florida.

The bill alleges that the enforcement of this Act will violate rights granted to them by the copyright Act of Congress; that it is in violation of the Federal Constitution and impairs the terms of certain existing contracts held by these plaintiffs.

The cause is before this Court upon application for interlocutory injunction; upon the bill of complaint, affidavits filed therewith and upon motion to dismiss the bill of complaint.

It is alleged that the defendants have threatened to and will enforce the provisions of this Act to the irreparable injury of plaintiffs unless such injunction order is issued.

It appearing to the Court that plaintiffs have shown that great damage will be inflicted upon them if preliminary injunction is not granted, and that there is grave doubt of the constitutionality of the Act;

It is considered by the Court that an order be entered granting such interlocutory injunction and that the motion to dismiss the bill be denied.

(S.)

RUFUS E. FOSTER,
Circuit Judge;

(S.)

LOUIE W. STRUM,
District Judge;

(S.)

A. V. LONG,
District Judge.

APPENDIX C.

IN THE UNITED STATES DISTRICT COURT IN AND
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GENE BUCK, Individually and as President of the American
Society of Composers, Authors and Publishers, etc., *et al.*
Complainants,

vs.

CARY D. LANDIS, Individually and as Attorney General of the
State of Florida, *et al.*, Defendants.

ORDER

This cause coming on to be heard and the same having
been argued by counsel for the respective parties, and the
Court having inspected the record and the briefs filed:

It is ordered:

1st. That the application for interlocutory injunction be
and the same is granted.

2nd. That the defendants, Cary D. Landis, individually
and as Attorney General for the State of Florida; E. Dixie
Beggs, Jr., individually and as State Attorney for the
First Judicial Circuit of Florida; O. C. Parker, Jr., indi-
vidually and as State Attorney for the Second Judicial
Circuit of Florida; A. K. Black, individually and as State
Attorney for the Third Judicial Circuit of Florida; William
A. Hallows, III individually and as State Attorney for the
Fourth Judicial Circuit of Florida; J. W. Hunter, individ-
ually and as State Attorney for the Fifth Judicial Circuit
of Florida; Chester B. McMullen, individually and as State
Attorney for the Sixth Judicial Circuit of Florida; Murray
Sams, individually and as State Attorney for the Seventh
Judicial Circuit of Florida; J. C. Adkins, individually and
as State Attorney for the Eighth Judicial Circuit of Flor-
ida; Murray W. Overstreet, individually and as State At-
torney for the Ninth Judicial Circuit of Florida; L. Grady
Burton, individually and as State Attorney for the Tenth
Judicial Circuit of Florida; G. A. Worley, individually and
as State Attorney for the Eleventh Judicial Circuit of
Florida; Roy D. Stubbs, individually and as State Attorney

for the Twelfth Judicial Circuit of Florida; J. Rex Farrior, individually and as State Attorney for the Thirteenth Judicial Circuit of Florida; John H. Carter, Jr., individually and as State Attorney for the Fourteenth Judicial Circuit of Florida; Louis F. Maire, individually and as State Attorney for the Fifteenth Judicial Circuit of Florida; and each of them individually and in their respective capacity as officials of the State of Florida, charged by said State Statute with the enforcement of the provisions thereof, be enjoined and restrained until the further order of this Court from bringing directly or indirectly any proceedings at law or in equity for the purpose of enforcing said State Statute against the complainants and others similarly situated, representatives, employees, agents or any of them, and from interfering with all existing contracts entered into by the complainants and others, including the Society and citizens and residents of the State of Florida, and from threatening to enforce against any citizen or resident of the State of Florida the penalties of said Statute in the event such citizen and resident desires to carry out their contracts with the American Society of Composers, Authors and Publishers, or complainants, or others similarly situated, and from prosecuting criminally the complainants, their representatives or agents or any of them or others similarly situated for doing any act or thing to detect infringements and to enforce their respective rights under the Copyright Act in the Federal Court of the State of Florida or elsewhere, and generally from doing any act or thing to carry out or enforce any of the provisions of said State Statute.

3rd. That the motion made by the defendants to dismiss the bill of complaint be and the same is denied.

4th. That the defendants be given thirty (30) days from the date hereof to answer.

This order is made conditional upon the plaintiffs filing herein within thirty (30) days a bond in the sum of five thousand (\$5,000.00) dollars conditioned upon the payment to the defendants of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined by this order; said bond to be

approved by the Clerk of the United States Court for the
Northern District of Florida.

Done and ordered this the 4th day of April, A. D. 190

(S.) RUFUS E. FOSTER,
Circuit Judge,

(S.) LOUIE W. STRUM,
District Judge.

(S.) A. V. LONG,
District Judge.

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